IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 67 OF 2007

SMT. LUISA BARBOSA E FERNANDES,
VASCO DA GAMA,GOA. ... Petitioner

Versus

MARIA VICTORIA PEREIRA(DECEASED)
THROUGH LR'S REPRESENTED BY
ATTORNEY D. D. MERCES HILARIO
RODRIGUE ... Respondent

Mr. V. Rodrigues, Advocate for the Petitioner.

Mr. A. X. N.rebello For Lr Of Resp.

Coram:- S.A.BOBDE, J.

Date:- 27th April, 2007

ORAL JUDGMENT:

Rule. Rule returnable forthwith. Heard by consent.

2. By the impugned order, the learned Civil Judge Junior Division, Vasco, has rejected the defendant's application for amendment of the written statement, on the ground that the defendant has not explained the delay of 12 years, since her earlier application for amendment was rejected.

2. Two aspects have been overlooked by the Civil Judge. Firstly that the earlier amendment proposed by the defendant was an amendment to the memo of appeal which was filed an an appeal from order. The considerations for granting the amendment of memo of appeal are entirely different from the consideration for granting an amendment to a pleading.

3. Secondly, the learned Civil judge J.D. has overlooked the fact that

the suit had been adjourned sine die, pending decision of the issue by the Mamlatdar. The learned Civil Judge was therefore not justified in observing that there is no proper explanation of delay.

4. Lastly, the learned counsel for the respondent opposed the grant of application on the ground that the defendant now seeks cultivating possession for 30 years instead of 25 years as claimed earlier. By itself, this is no ground for refusing the amendment. It cannot be said that the plaintiff has acquired any vested right or have changed their position materially on the earlier pleading of the defendant that she is in cultivating possession for 25 years. No palpable prejudice can be caused to the plaintiff. Indeed the plaintiff would be allowed to make any consequential amendment as may be advised upon the defendant's amendment.

5. The impugned Order is therefore set aside. The amendment proposed by the defendant is allowed. The amendment to be carried out within a period of four weeks from today. Rule discharged.

S.A.BOBDE, J.

sl.